



TOURO COLLEGE
JACOB D. FUCHSBERG LAW CENTER
Where Knowledge and Values Meet

Touro Law Review

Volume 36 | Number 3

Article 4

2021

Introduction to Charles A. Reich's Keeping Up: Walking with Justice Douglas

Rodger D. Citron

Touro Law Center, rcitron@tourolaw.edu

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/lawreview>



Part of the [Administrative Law Commons](#), [Constitutional Law Commons](#), [Environmental Law Commons](#), [Political Economy Commons](#), and the [Property Law and Real Estate Commons](#)

Recommended Citation

Citron, Rodger D. (2021) "Introduction to Charles A. Reich's Keeping Up: Walking with Justice Douglas," *Touro Law Review*: Vol. 36 : No. 3 , Article 4.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol36/iss3/4>

This Article is brought to you for free and open access by Digital Commons @ Touro Law Center. It has been accepted for inclusion in Touro Law Review by an authorized editor of Digital Commons @ Touro Law Center. For more information, please contact lross@tourolaw.edu.

INTRODUCTION TO CHARLES A. REICH'S "KEEPING UP: WALKING WITH JUSTICE DOUGLAS"

*Rodger D. Citron**

In 2010, Charles Reich visited Touro College, Jacob D. Fuchsberg Law Center. He was the keynote speaker for the Law Center's Honors Banquet. Reich gave a marvelous talk about his year as a law clerk for Justice Hugo Black during the 1953-54 Supreme Court term.¹ Reich's talk elaborated on the stories and ideas that he discussed in "A Passion for Justice," his law review article on Black.² As Reich detailed, his life and work were significantly influenced by that year with the Justice.

William O. Douglas also was a Justice on the Supreme Court that year. Reich admired Douglas and became friends with him. The friendship developed over the course of hikes along the C&O Canal towpath near Washington, D.C. It began in the 1950s, when Reich was a lawyer in private practice in Washington, and extended through the 1970s, when Douglas retired from the Court. Douglas influenced Reich as much as Black did.

During the last decade of his life, Reich worked on an article about Justice Douglas. It now is our privilege to publish this article. It is quintessential Reich. With an astute eye, he describes his walks with the Justice. Douglas was impatient—hence the title of the article,

*Rodger D. Citron is the Associate Dean for Research and Scholarship and a Professor of Law at Touro College, Jacob D. Fuchsberg Law Center. Thank you to the Reich family for permission to publish the article, and to Greg Marriner for his time and help with the article. The article is Charles's Reich's manuscript from 2016. We have made some minor changes to Reich's language and other stylistic changes and, with the assistance of the Touro Law Review, added footnotes. We have done our best to retain the language and style of the article as Reich wrote it.

¹ Charles A. Reich, *Charles A. Reich: Scholar of American Law and Society Author of The Greening of America*, THE TOURO LAWYER, Winter 2011, at 32.

² See Charles A. Reich, *A Passion for Justice*, 26 TOURO L. REV. 393 (2010).

because it was Reich's job to keep up with him. Douglas was dazzlingly brilliant. Every hike was a seminar. Here, too, it was Reich's job to keep up. That Douglas continued to hike with Reich over the years shows that he did.

In telling the stories of their hikes, Reich discusses key aspects of Justice Douglas's life and ideas. During the New Deal, Douglas rocketed to prominence. He left his position as Sterling Professor at Yale Law School in 1934 to serve as a Commissioner at the Securities and Exchange Commission ("SEC"), became chairman of the SEC in 1937, and was appointed to the Supreme Court in 1939. Douglas was a justice for thirty-six years. No one ever has served as long. And yet, as Reich notes, "it is hard to imagine a more unsuitable job for an active man who had never in his life shown any interest in sitting behind the Bench listening to others."

Over the course of their walks, Justice Douglas and Reich discussed ideas that were central to the Justice's thinking, including the importance of individual liberty, the need to protect privacy, and threats to the environment. Reich explains how these ideas informed some of Douglas's most important judicial decisions, including *Griswold v. Connecticut*³ and *Sierra Club v. Morton*.⁴

They also talked about the Supreme Court and, to a lesser extent, Yale Law School. As a law professor at Yale in the 1930s, Douglas was a legal realist.⁵ Reich shows how legal realism continued to influence Justice Douglas's jurisprudence on the Supreme Court. He also, briefly, considers how Douglas would approach some of the most challenging legal issues of our time. (It must be noted that Reich did not work on the article after 2016; hence he does not discuss legal issues that emerged after the election of Donald Trump as president.)

Reich's good friend, Greg Marriner, helped him research and write the article. While I was writing this introduction, Marriner reminded me that the title of the article, "Keeping Up," refers also to how Douglas and Reich viewed the mission of the Supreme Court. As the world (including the United States) changed, the law should evolve as well. This idea extended to the Constitution, which Douglas often was required to interpret as a justice. As Reich shows, *Griswold* is a

³ *Griswold v. Connecticut*, 381 U.S. 479 (1965).

⁴ *Sierra Club v. Morton*, 405 U.S. 727 (1972) (Douglas, J., dissenting).

⁵ See LAURA KALMAN, *LEGAL REALISM AT YALE, 1927-1960* (1986) (providing a comprehensive account of the ideas of legal realism and Yale Law School's role in the development of these ideas).

textbook example of the Court interpreting the Constitution to keep up with developments in society.

Reich ends the article with his visit to Goose Prairie, Washington, in 1975. Justice Douglas owned a ranch there. As Reich notes, it was about forty miles from Yakima, where Douglas lived as a young boy with his widowed mother and two sisters. Douglas suffered a stroke on December 31, 1974. The stroke was severe and left Douglas partially paralyzed.

Over the summer of 1975, it was not clear whether Douglas would remain on the Court. Could he serve? Would he retire? In September, Douglas summoned Reich to Goose Prairie to discuss the situation with him. Reich's article ends with his account of that visit. Subsequently, Douglas returned to the Court for service but retired in November 1975.